

KERRY AND INGRID DOUGLAS

IBLA 80-721

Decided February 26, 1981

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void. OR MC 29113 through OR MC 29116, inclusive.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 2, 1979, the claim is properly deemed abandoned and void.

APPEARANCES: Kerry Douglas, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Kerry Douglas appeals from the decision of May 5, 1980, wherein the Oregon State Office, Bureau of Land Management (BLM), declared the New Life Claims I, II, III, and IV, OR MC 29113 through OR MC 29116, abandoned and void because BLM records indicate no affidavit of assessment work performed (proof of labor) or notice of intention to hold these claims was received by the BLM office on or before October 22, 1979, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulations set forth at 43 CFR 3833.2-1(a) and 3833.4. These claims were located prior to October 21, 1976. Appellant filed copies of notices of location with BLM on October 22, 1979.

In his statement of reasons on appeal, Douglas states he filed all the necessary papers by 10 a.m., October 22, 1979, and possibly that BLM lost one of the documents. The statement of reasons includes no evidence showing the documents were in fact received by BLM.

A search of the case files reveals that the required documents with a date stamp on or prior to October 22, 1979, are not in said files.

[1] Basically appellant contends that the appropriate documents were submitted but were lost by BLM. Where there is no evidence in the case file to indicate compliance, other than appellant's assertion that he thought he had timely filed the required documents, we are constrained to find that these documents were not, in fact, filed. Wayne E. Clutis, 50 IBLA 379 (1980).

The pertinent statutory provision, 43 U.S.C. § 1744 (1976), provides in part as follows:

(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976 and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection * * *:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim * * *, an affidavit of assessment work performed thereon, o[r] a detailed report provided by section 28-1 of Title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

* * * * *

(c) The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner.

These provisions have been implemented by Departmental regulations 43 CFR 3833.2-1 and 3833.4. Thus, it is clear that whether the owner of an unpatented mining claim located prior to October 21, 1976, fails to file timely an affidavit of annual assessment work or notice of intention to hold the claim, his claim is deemed conclusively to be abandoned and to be null and void. James V. Brady, 51 IBLA 361 (1980);

Stanley Bishop, 50 IBLA 371 (1980); Donald D. Vesely, 50 IBLA 277 (1980); Kenneth K. Parker, 48 IBLA 129 (1980). In Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), appeal filed Civ. No. 79-2255 (10th Cir. Nov. 21, 1979), the court sustained the statutory recordation requirement and its implementing regulations against constitutional challenges.

This Board has no authority to waive the statutory and regulatory requirements.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

